

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Controlled Executive Disclosure Proposal

FR	Chairman, SECOM Rm 1225 Ames		EXTENSION	NO. SECOM-D-124
			DATE	1 May 1986
TO: (Officer designation, room number, and building)	DATE	RECEIVED	FORWARDED	OFFICER'S INITIALS
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~~DIRECTOR OF CENTRAL INTELLIGENCE~~
Security Committee

SECOM-D-124

30 April 1986

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence
Director, Intelligence Community Staff
Deputy Director, Intelligence Community Staff

STAT FROM:

Chairman

SUBJECT: Controlled Executive Disclosure Proposal

STAT 1. Per your request on 23 April, attached is the proposal by
of NSA, Chairman of the SECOM Unauthorized Disclosure Investigation
Subcommittee (UDIS), for an NSDD to help control leaks.

2. Also attached are responses from SECOM members and internal Justice
Department reactions to the proposal. They are less than favorable. I have
instructed Mike to take the proposal to the UDIS and try to work out a text
that more straightforwardly creates a system of accountability for
disclosures. I believe Mike may have tried too hard to "sugar coat" the pill.

3. The NSDD proposal clearly needs work to make clear that control of
sensitive material, not declassification, is the objective. I believe this is
a do-able thing and should mesh well with your proposal for a senior panel to
advise on which disclosures should be pursued most vigorously.

STAT 4. We will keep you advised of how this develops.

Attachments: a/s

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DIRECTOR OF CENTRAL INTELLIGENCE
SECURITY COMMITTEE
UNAUTHORIZED DISCLOSURES INVESTIGATIONS SUBCOMMITTEE

12 March 1986

STAT

[Redacted]
Chairman, DCI Security Committee
Central Intelligence Agency
Washington, D.C. 20505

STAT

Dear [Redacted]

As a part of our ongoing efforts to develop initiatives which may be useful to the Director of Central Intelligence in his effort to reduce the incidence of unauthorized disclosures which are seriously damaging to intelligence sources and methods, I have drafted the attached letter for the DCI's signature.

The letter, addressed to the Special Assistant to the President for National Security Affairs, encloses a copy of a draft NSDD on "Controlled Executive Disclosure".

If the DCI believes it to be do-able, and it is accepted, we can help organize a small ad hoc working group to assist in implementation actions.

STAT

Sincerely,

[Redacted]
CHAIRMAN
Unauthorized Disclosure
Investigations Subcommittee

Encl:
a/s

DIRECTOR OF CENTRAL INTELLIGENCE

MEMORANDUM FOR SPECIAL ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS

SUBJECT: Proposed NSDD on "Controlled Executive Disclosure"

1. As a part of our continuing effort to develop innovative approaches to the serious problem of unauthorized disclosures of sensitive information, the Chairman, Unauthorized Disclosures Investigations Subcommittee of my Security Committee has developed a draft National Security Decision Directive to establish a system for coordinating proposed disclosures.

2. The proposed "Controlled Executive Disclosure" system has several useful features:

- it is drafted to protect not only intelligence but all national security information
- it is not pointed to the media but rather to the "leaker"
- it recognizes that certain senior officials must, from time to time, release what was classified information to do their job
- it sets up a system to accommodate the executive who must release information - while protecting the still sensitive aspects

3. I recognize that some seniors may consider this "too bitter a pill" and fight it. It can only be effective if it gets the President's strong support.

4. This proposal has been discussed with Ken DeGraffenreid of your staff and with the Director, Information Security Oversight Office, both of whom felt it had merit and should be tried.

5. I recommend the attached draft be discussed at an early National Security Council meeting.

6. If accepted, I am prepared to provide assistance on its implementation. An Ad Hoc Working Group could be convened to facilitate implementation and develop associated ground rules.

WILLIAM J. CASEY

Encl:

Draft NSDD "Controlled Executive Disclosure"

DRAFT

THE WHITE HOUSE

WASHINGTON

National Security
Decision Directive

CONTROLLED EXECUTIVE DISCLOSURE

From time to time authorities within the Executive Departments determine that it is necessary to declassify and release formerly classified information in connection with valid foreign policy or national security requirements.

The purpose of this directive is to establish a procedure to assure that such releases do not inadvertently jeopardize military operations, foreign relations, or sensitive intelligence sources or methods.

When such proposed releases relate to military operations, they will be referred to the Secretary of Defense or his designee for approval.

When such proposed releases relate to foreign relations, they will be referred to the Secretary of State or his designee for approval.

When such proposed releases include, or are based on, sensitive intelligence sources or methods they will be referred to the Director of Central Intelligence or his designee for approval. Additionally if sensitive cryptologic information is involved, the item must be referred to the Director, National Security Agency.

Releases, either verbal or written, which contain formerly classified information and which have been coordinated in accordance with the control procedures described herein will be referred to as Controlled Executive Disclosures (CED). Authorities releasing such information will maintain a record of the CED coordination and release details. Releases of classified information which have not been subject to the CED coordination process will be considered unauthorized disclosures.

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14 APR 1986

MEMORANDUM FOR: Chairman, SECOM

STAT
FROM:

Director of Security

SUBJECT: Proposed NSDD on Controlled Executive Disclosure

1. The proposed National Security Decision Directive on Controlled Executive Disclosure has been reviewed by appropriate Agency components including the Office of General Counsel. Comments that have been offered concerning the draft follow:

- It should be clearly understood that this proposed NSDD should follow the requirements of Executive Order 12356 and the various DCIDs and NSDDs relating to the classification of National Security Information.

- With that in mind, Executive Order requirements concerning declassification of information will continue to apply and senior officials must have information formally declassified by appropriate authorities before that information can be released.

- It should also be clearly understood that information which originated with one agency cannot be declassified by a second agency.

2. It is specifically suggested that the wording in the first paragraph be changed to clearly reflect that the information currently classified is intended to be declassified. The term "formerly classified information" is misleading and the following change is offered:

From time to time authorities within the executive departments determine that it is necessary to declassify currently classified information for release in connection with valid foreign policy or national security requirements.

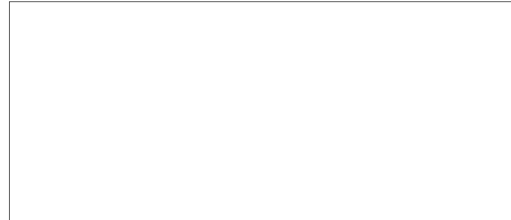
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The reference to "formerly classified information" in the last paragraph can be retained.

3. This proposal has been discussed at length for at least two years. It is a good idea and we endorse it. At a minimum, a determination could be made that a disclosure was authorized and properly declassified for policy reasons and was not passed to the media without prior authorization.



STAT

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DEPARTMENT OF THE NAVY
NAVAL INTELLIGENCE COMMAND
4600 SILVER HILL ROAD
WASHINGTON, D.C. 20389-5000

IN REPLY REFER TO

5520
Ser NIC-41S/2100
3 Apr 86

MEMORANDUM FOR CHAIRMAN, DCI SECURITY COMMITTEE

Subj: DRAFT NSDD ON CONTROLLED EXECUTIVE DISCLOSURE

Ref: (a) Chairman, UDIS memo of 12 Mar 86

1. We support the intent of the draft NSDD in reference (a) to bring some control to executive disclosures and make clear which are unauthorized disclosures to be investigated and preventive actions taken.

2. Regret that we cannot concur with the current draft NSDD:

- What is set forth is not really a procedure; just legitimizes the present operative process. No control would be added. It would just convey a false sense of having brought the problem under control.

- Only the President or his designees may declassify properly classified information (other than the original classification authority). Only the President could delegate release power.

- Only the original classification authority is normally in a position to review his whole program and can make decisions to release. There is often no reason to take the matter of release up to the Secretary of Defense or comparable levels.

- First para doesn't deal directly with release of information which has been classified in accordance with Executive Order. Would it really be an improvement to remove the original classification authority from the decision process?

- We should confine the NSDD to addressing classified intelligence information and not extend to all classified information. (Non-intelligence information originated in DOD is not under the purview of the DCI or of SECOM.)

- Last statement that "releases of classified information which have not been subject to the CED coordination process will be considered unauthorized disclosures" combined with the process set forth will cause a great portion of now properly authorized disclosures to become unauthorized disclosures. Where would the original classification authority be brought to bear in the process? What about controlled disclosures to one or more foreign governments while the info is kept classified to protect it from other governments?

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- References to "formerly classified information" in the first and fifth paras should be changed to "classified information."

- First paragraph which encompasses all classified information "in connection with valid foreign policy or national security requirements" is far too broad and ambiguous to be helpful; should be a requirement to determine/demonstrate that national security or foreign policy would be enhanced.

- Singling out the cryptologic program for separate treatment and referral back to the Director, National Security Agency is objectionable. There are other programs of special sensitivity.

- Process described requires that too many people get involved and process would take too long.

3. Recommend not attempting to control the authorization process initially, but to pursue only a requirement for mandatory reporting of CED's to a centralized national control point. That centralized data base at a high level (under the President's National Security Advisor, National Control Authority, the NSC principals, etc.) could maintain a record of all proper Executive Disclosures to help determine what disclosures were not authorized (and were proper objects for investigation and corrective action).

4. We are prepared to help in working out a draft NSDD that could curtail many unauthorized disclosures. Believe that both our security and legal personnel should be involved.

W.C. Horn

W. C. HORN
CAPTAIN, USN
Navy Member, SECOM

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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

Date: March 28, 1986

BY LIAISON

To:

DCI Security Committee
Room 1225, Ames Building
Washington, D. C.

From: *Gary L. Stoops*
Gary L. Stoops
Security Programs Manager
Federal Bureau of Investigation

Subject: PROPOSED NATIONAL SECURITY DECISION DIRECTIVE ON
"CONTROLLED EXECUTIVE DISCLOSURE"

Reference is made to the Director of Central Intelligence Security Committee's Unauthorized Disclosure Investigations Subcommittee's letter to you of March 12, 1986.

Referenced letter contained as enclosures a proposed letter addressed to the Special Assistant to the President for National Security Affairs from the Director of Central Intelligence and a proposed National Security Decision Directive (NSDD) draft on "Controlled Executive Disclosure." Pursuant to your request at the Director of Central Intelligence Security Committee meeting on March 19, 1986, a review of the NSDD draft on "Controlled Executive Disclosure" was made and the following observations and comments are furnished:

The proposed NSDD draft concerning "Controlled Executive Disclosure" sets forth procedures to declassify formerly classified information in connection with valid foreign policy or national security requirements, which is in direct conflict with the procedure for declassifying classified material pursuant to Executive Order 12356, entitled "National Security Information." Executive Order 12356, Section 3.1(b), states: "Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either, or officials delegated such authority in writing by the agency head or the senior agency official designated pursuant to Section 5.3(a)."

STAT

To place the authority to declassify an originating department's or agency's classified information emanating from sensitive intelligence sources or methods to the Central Intelligence Agency, based on a request from another department or agency, would usurp the originating department's or agency's responsibility to protect its sources and methods in accordance with Executive Order 12356 and source agreements. This also would have a devastating effect on the originating department's or agency's ability to develop and maintain sensitive intelligence sources and methods. The FBI disagrees with the declassification procedures in the proposed NSDD "Controlled Executive Disclosure," as it is presently drafted.

The proposed NSDD should be rewritten to establish the procedure that all proposed releases of classified information will be referred to the head of the originating department or agency or his designee for approval.

ROUTING AND TRANSMITTAL SLIP

Date

APR 2 1986

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

2. Chairman, SECOM

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Please do not disseminate the attached comments outside of your office and destroy your copies when you have finished reviewing them.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

D. Jerry Rubino, Director
Security Staff

Room No.—Bldg.

6525

Phone No.

633-2094

5041-102

* U.S.G.P.O.: 1985:461-274/426

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA

FPMR (41 CFR) 101-11.206

Memorandum

LIMITED
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Subject
Unauthorized Disclosures Investigations
Subcommittee (UDIS)

Date MAR 27 1986
TEM:mab

To
D. Jerry Rubino
Department of Justice
Security Committee (SECOM)
Member

TEM

From
Thomas E. Marum, Deputy Chief
Internal Security Section
Criminal Division

Attention: Joseph Norris

This is in response to your memorandum of March 24, 1986, which referred to me a proposal from the Chairman, UDIS, urging that the Director of Central Intelligence write to the Special Assistant to the President for National Security Affairs recommending that a National Security Decision Directive (NSDD) be issued on the subject "Controlled Executive Disclosure." You request my comments.

As you may recall, [] surfaced his proposal on "Controlled Executive Disclosure" at a meeting which you chaired in the vault last year. Those present at the meeting were not receptive to his suggestion; nevertheless, he persists. It should be recognized that he is submitting his proposal as an individual; it has not been approved by the UDIS.

STAT

In my opinion, "Controlled Executive Disclosure" is just another name for declassification. There are existing procedures for seeking to have classified information declassified. I see no need for a National Security Council (NSC) directive on the subject. Declassification with a fancy title is still declassification.

My fundamental objection to the proposal is that, although [] refers to "effort(s) to reduce the incidence of unauthorized disclosures which are seriously damaging to intelligence sources and methods," he ignores the very nature of high-level leaks and the motives of those who leak.

STAT

The proposed NSDD would apply only to "authorities within the Executive Departments (who) determine that it is necessary to declassify and release formerly (sic) classified information in connection with valid foreign policy or national security requirements (emphasis added).

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In order to endorse this proposal, one would have to assume that an executive branch official who desired to disclose presently classified information in order to advance a valid national security or foreign policy objective, would go to the trouble of obtaining advance approval from the head of the appropriate department or agency. How long would such a procedure take? As anyone experienced in government operations knows, it would take so long that the information would be of interest only to historians, not the news media. What if the originating agency denied the request? The laudable motives of the official who, in accordance with the NSDD, went through channels, would be frustrated. As a practical matter, therefore, he will ignore the NSDD and leak the information.

Another problem is that the proposal ignores the fact that many high-level leaks are intended to drum up opposition to, rather than support for, administration policies or proposals. As to such leaks, the NSDD would be of no effect because it would not even be considered by the leaker.

Finally, in prosecuting cases involving violations of the espionage laws, the Government must establish the national defense character of the classified information involved. If a procedure were adopted which would undercut what is already a seriously impaired system, granting officials of the Executive Branch the authority to disclose classified information, our ability to defend the classification system would be seriously affected, no matter what the motive of the official might be. As you know, the present system is under constant attack by defendants and the news media. News agencies are seeking to intervene in espionage cases now in litigation in Baltimore and Alexandria, in order to obtain access to the classified information which is vital to the prosecution. It is difficult enough at present to build and maintain the Government's credibility in defending the classification system, and the proposed NSDD, if enacted, would be a major added burden.

In sum, I oppose the proposal because it is not well thought out and would have no practical effect. It will not deter leaks or detect leakers, and would be an impediment to the successful prosecution of national security offenses. I do not think that the President should be asked to sign such an ineffective and potentially harmful document.

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U.S. Department of Justice

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Office of Intelligence Policy and Review

Washington, D.C. 20530

March 27, 1986

MEMORANDUM FOR D. JERRY RUBINO
Director, Security Staff

Re: UDIS Proposal for NSDD on
"Controlled Executive Disclosures"

You have asked for our comments on the proposal for a new National Security Decision Directive regarding declassification and disclosure of classified information by Executive departments.

To the extent this proposal is intended to regulate contacts with the media, it is not necessary. In NSDD-84, the President provided, in part:

Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel so as to reduce the opportunity for negligent or deliberate disclosures of classified information. All persons with authorized access to classified information shall be clearly apprised of the agency's policies in this regard.
(\$ 1.d.)

Although certain parts of NSDD-84 were held in abeyance, this requirement was not one of them and has been in effect since March 1983. Obviously, it was intended to control and provide procedures for authorizing disclosures of "formerly classified information" in the agency's interests. The NSC-chaired task force to implement the directive was supposed to oversee the development of implementing policies but nothing appears to have been done. It makes little sense to propose a new NSDD when existing directives are ignored.

Also, the proposed NSDD seems to restate requirements for coordination, originating agency control, and declassification practices that are already covered in Executive Order 12356.

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- 2 -

Presumably, any declassification of military, diplomatic, intelligence, or cryptologic information already must be coordinated with DOD, State, DCI or NSA, respectively.

The proposal is a bit ambiguous on this point but it should be recognized, if the intent was somehow to limit the extent of release, that any information subject to disclosures under this procedure would no longer be protectable as classified from FOIA, E.O. 12356, and judicial discovery requests for access.

These general concerns seem to be good reasons not to have such an NSDD. If one is necessary, however, the following specific comments should be considered.

There seems to be no reason to limit the proposed clearance process for disclosures to "sensitive" intelligence sources and methods. Does this mean there are "non-sensitive" sources and methods that are classified? If so, can they be disclosed without using this process?

The term "Controlled Executive Disclosures" conjures up the image of elite, high level leakers who are cynically insulating themselves from accountability. Why not call them something like "Official Declassification Determinations", since that is what they amount to?

It appears the last paragraph embodies the true purpose of the proposal, i.e., to create an accountability system for "official leaks" and make clear that all others are punishable. If this is so and all entities involved agree this is a good idea, there should be a more straightforward means of accomplishing this.



MARY C. LAWTON
Counsel for Intelligence Policy
Office of Intelligence Policy and Review

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DEPARTMENT OF THE TREASURY
WASHINGTON

April 2, 1986

STAT

MEMORANDUM FOR:

[REDACTED]
CHAIRMAN, SECURITY COMMITTEE

FROM:

VAUGHN V. HOLCOMBE, JR. *VVA*
TREASURY MEMBER

SUBJECT:

Draft USDD - "Controlled Executive Disclosure"

The proposed NSDD on "Controlled Executive Disclosure" has been discussed with my principal. This Department has doubts as to the workability of the proposal and our preliminary position is to oppose it.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT CHIEF OF STAFF FOR INTELLIGENCE
WASHINGTON, DC 20310-1001

REPLY TO
ATTENTION OF

31 MAR 1986

DAMI-CIS

MEMORANDUM FOR THE CHAIRMAN, DCI SECURITY COMMITTEE

SUBJECT: Proposed NSDD on "Controlled Executive Disclosure"

1. We have carefully reviewed the Draft NSDD on "Controlled Executive Disclosure" proposed by the UDIS Chairman. The UDIS idea of coordinating the intended release of classified or formally classified data has merit. We fully support an initiative which better defines the conditions under which intended disclosures should take place.

2. However, we do not feel that the UDIS should become embroiled in what is essentially a Public Affairs issue. Within Army, long established mechanisms already exist to oversee the public disclosure of information, and we see no need for UDIS to pursue a new NSDD as a separate initiative on the issue. Therefore, we recommend this suggestion be referred to the appropriate Public Affairs officials for consideration, and implementation into the existing system.

Anthony J. Gallo
ANTHONY J. GALLO, Jr.
Colonel, GS
Army Member, SECOM



U.S. Department of Justice

APR 1 1986

Washington, D.C. 20530

STAT

[Redacted]
Chairman, DCI Security Committee
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Leidenheimer:

This letter is in response to your request for comments regarding a proposed National Security Decision Directive (NSDD) on "Controlled Executive Disclosure." My staff has obtained comments from both the Office of Intelligence Policy and Review and the Criminal Division. In addition, the Federal Bureau of Investigation forwarded their comments under separate cover dated March 28, 1986.

All Department of Justice (DOJ) components who commented on this proposed executive order, including my office, object to the NSDD for the following general reasons:

- o there are already procedures for the declassification of National Security Information, which is all this new directive would accomplish;
- o the NSDD restates policies already contained in Executive Order 12356; and
- o there may be some prosecutorial problems in future espionage cases if this NSDD is approved.

For these reasons the DOJ recommends against forwarding this proposal to the National Security Council.

Thank you for the opportunity to comment on this proposal.

Sincerely,

D. Gerry Rubino

D. Gerry Rubino
Department of Justice
SECOM Member



NATIONAL SECURITY AGENCY
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Serial: M5-0027-86

26 MAR 1986

MEMORANDUM FOR THE CHAIRMAN, DCI SECURITY COMMITTEE

SUBJECT: Proposed NSDD Controlled Executive Disclosure

1. I have read the proposed NSDD referenced above. I agree with and support the intent of [redacted] submission. The wording of the NSDD should be more specific to include that classified information referred for disclosure must be sanitized or declassified prior to release. STAT

2. Perhaps the Unauthorized Disclosure Subcommittee could be tasked with preparing a final document for submission for the President's signature. STAT

STAT



Alternate NSA Member